

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

INCOME TAX REFERENCE No 183 of 1988

For Approval and Signature:

Hon'ble MR.JUSTICE R.K.ABICHANDANI
and
Hon'ble MR.JUSTICE A.L.DAVE

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1. Whether Reporters of Local Papers may be allowed : YES
to see the judgements?
 2. To be referred to the Reporter or not? : NO
 3. Whether Their Lordships wish to see the fair copy : NO
of the judgement?
 4. Whether this case involves a substantial question : NO
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder?
 5. Whether it is to be circulated to the concerned : NO
Magistrate/Magistrates, Judge/Judges, Tribunal/Tribunals?

COMMISSIONER OF INCOME-TAX

Versus

LALLUBHAI JOGIBHAI PATEL

Appearance:

1. INCOME TAX REFERENCE No. 183 of 1988
MR BB NAIK for Petitioner No. 1
MR MANISH J. SHAH FOR MR JP SHAH for Respondent No. 1

CORAM : MR.JUSTICE R.K.ABICHANDANI
and
MR.JUSTICE A.L.DAVE

Date of decision: 23/01/2003

ORAL JUDGEMENT

(Per : MR.JUSTICE R.K.ABICHANDANI)

1. The Income Tax Appellate Tribunal, Ahmedabad Bench "C", has referred the following question for the opinion of this Court under Section 256(1) of the Income Tax Act, 1961 :-

"Whether, the Appellate Tribunal is right in law in confirming the penalty only in respect of an amount of Rs.31,000/- and thereby cancelling the balance penalty levied under section 271(1)(c) of the I.T. Act, 1961?"

2. During the course of operation under Section 132 of the Act on the 30th November, 1974, a Mercedes car was found parked in the premises of the assessee. The registration book, a servicing bill and a blank transfer form signed by the owner of the vehicle were also recovered from the premises. As the assessee did not disclose the source of income by which he had acquired the said vehicle, an amount of Rs.65,000/-, representing the investment, was added to the total income of the assessee and a notice under Section 274 read with Section 271 was issued to show cause as to why penalty under Section 271(1)(c) should not be levied on the assessee. The addition to the total income in respect of the investment in the car was, ultimately, scaled down to Rs.56,000/- by order dated the 19th March, 1983, passed by the Commissioner of Income Tax (Appeals). The assessee, in response to the notice, kept on shifting his stand and, in his letters dated 16.1.1980 and 25.2.1980, he stated that the car was purchased only for Rs.31,000/-. The Income Tax Officer, by his order dated the 23rd September, 1983, held that the assessee had deliberately concealed the particulars of income to the extent of Rs.56,000/- utilized by him for acquiring the car and, therefore, was liable to penalty. The penalty equal to 100% of the income concealed was imposed on the assessee.

3. The Commissioner of Income Tax (Appeals), before whom that order was challenged, decided, by his order dated the 2nd January, 1984, that the penalty under Section 271(1)(c) could not be imposed on the assessee because the Income Tax Officer had not discharged the onus on him to show that, in the investment in the car, in the year of account, the assessee's income of the year, which he had concealed, was involved. It was observed that, in the Wealth Tax records of the assessee, he had returned a cash on hand of Rs.75,000/- and that he was assessed to Wealth Tax exceeding Rs.11,00,000/-. The Commissioner observed that, whether the investment in the car would reflect any concealed income of the assessee in the year, being the question itself, it cannot be said that the provisions of explanation to Section 271(1)(c) would be applicable to the facts of the case and that the penalty was to be examined within the framework of the main provisions of Section 271(1)(c). It was held that

the onus was on the Income Tax Officer to establish directly or indirectly that the investment in the car involves an income of the year under review which the assessee had not disclosed. He, therefore, cancelled the entire penalty of Rs.56,000/-.

4. The Tribunal, on the basis of the material on record, held that the Commissioner (Appeals) was in error in cancelling the penalty. According to the Tribunal, the explanation was attracted and it was for the assessee to lead necessary evidence so as to properly rebut the presumption. The Tribunal found that the income used in purchase of the car was income of the year under consideration and that the asset acquired was, admittedly, belonging to the assessee. The Tribunal, however, noted that the dispute centred around the determination of the value of the car which was upheld at Rs.56,000/- and that the amount, admittedly, paid for the purchase thereof was Rs.31,000/-. It took into account the contention raised by the assessee in his letter dated the 29th August, 1983, that the difference in value could not amount to concealment. It held that, regarding concealment to the extent of Rs.31,000/-, it could be said that there was no dispute in view of the admission by the assessee and that, if at all there could be said to be some dispute, it could be in relation to the amount in excess of Rs.31,000/-, which involved a factor of estimate on the basis of evidence. The penalty was, therefore, upheld only in respect of Rs.31,000/- for concealment of income and the order of the Commissioner (Appeals) was modified accordingly.

5. The learned counsel appearing for the revenue argued that the explanation to clause (c) of Section 271(1) was attracted in this case and the entire amount of Rs.56,000/-, being the price of the car purchased, should be treated to have been an income deemed to have been concealed under the explanation. It was submitted that, once a presumption arose under the explanation, the minimum penalty of 100% of the amount concealed was called for and, therefore, the Tribunal ought to have restored the entire penalty of Rs.56,000/- and not mere Rs.31,000/-.

6. There can be no dispute about the fact that the explanation to Section 271(1)(c) is a part of Section 271 and, therefore, it applied notwithstanding that it may not have been separately mentioned. This point is, now, concluded by the decision of the Supreme Court in K.P. Madhusudhanan v. C.I.T., reported in 251 ITR 99. It is, however, clear that the presumption is not irrebutable

and from the material on record, the assessee can show that there was no concealment. The assessee, by his two letters referred to hereinabove, admitted that he had purchased the car for Rs.31,000/- and, therefore, that was a valid basis on which the Tribunal held that there, admittedly, was concealment of income to the tune of Rs.31,000/-. As regards the amount which was in excess of Rs.31,000/-, the Tribunal has found that it was a mere estimate by the Income Tax Officer while fixing the amount that went into purchase of the car. The finding of the Tribunal that the amount which was in excess of Rs.31,000/- involved a factor of estimate, on the basis of lack of evidence, cannot be said to be a pervert or unreasonable finding. We, therefore, hold that the Tribunal was right in law in confirming the penalty only in respect of an amount of Rs.31,000/- and cancelling the balance penalty levied under Section 271(1)(c) of the Income Tax Act, 1961. The question referred to us is, therefore, answered in the affirmative, against the Revenue and in favour of the assessee. The Reference stands disposed of accordingly. There shall be no order as to costs.

[R.K. ABICHANDANI, J.]

[A. L. DAVE, J.]

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